end of detention period, the person should be detained further. At the same time, I can see nothing which fetters the power of the Minister to detain a person, simply because before detaining him he has placed him under restriction or *vice versa*. If he has restricted a person, he may on the expiry of the restriction order detain him, and it follows that if he has detained a person, he may on the expiry of the detention order, restrict him, provided that before making either order, as the case may require, he is so satisfied in accordance with the provisions of sub-section (1) of section 8 of the Act.

It seems to me that the arguments of learned counsel for the respondent amount to nothing more than a cover for challenging the satisfaction of the Yang di-Pertuan Agong when he made the order. The Yang di-Pertuan Agong when making the restriction order clearly expressed that he was satisfied that the respondent should be restricted. The order should be treated as a fresh one. It should not be regarded as related to the detention order because when he made this order he had been satisfied that the respondent should have been detained. The restriction order might have been made on changing circumstances or situation relating to the respondent on the expiry of the detention order. Nevertheless in making the restriction order the Yang di-Pertuan Agong was satisfied afresh. The only ground, as far as I am aware, on which the court can say that it is invalid is that it was made in bad faith. This was not shown in this case.

I would agree that once a detention order has been made a restriction order cannot be made at the same time against the same person because section 8 of the Act says the order to be made is either detention or restriction. It is alternative in this sense. It is in this situation only that I would say that the Minister would be *functus officio*. From what I can see it would be pointless to make one order at the same time as the other. But there is nothing to prevent one order being made on the expiry of the other upon a fresh satisfaction.

The appeal is allowed. The order of acquittal is set aside. I order that the respondent be retried.

Appeal allowed. Order of acquittal set aside. Re-trial ordered.

Solicitors: *Rithauddeen & Aziz.*

SAW CHING HO & ANOR. v. TAN AH KUI

[O.C.J. (Sharma J.) August 14, 1969]

[Malacca — Civil Suit No. 154 of 1966]

Practice and Procedure — Costs — Settlement of claim by plaintiff — Costs required to be taxed — R.S.C. 1957, O. 22 r. 14(11).

In this case an application was made by the next friend of an infant plaintiff for approval of the settlement of a claim for $10,000 and *inter alia* for an order that "the costs chargeable on a solicitor and client basis but not chargeable as between party and party be fixed at the sum of $1,000 and be paid to the plaintiff's solicitors out of the sum of $10,000."

Held: in view of the mandatory provisions by O. 22 r. 14(11), which require the costs in such a case to be taxed and certified the prayer relating to costs should be refused.

Case referred to:—

(1) *Barker and Anor. v. S. Green & Sons Ltd.* [1933] W.N. 190.

CIVIL SUIT

A.C. Vohrah for the plaintiffs.

S.G. Thakurta for the defendant.

Cur. Adv. Vult.

Sharma J.: The first plaintiff is an infant who sues by his next friend Saw Swee Teck. (O. 16 r. 16). Saw Swee Teck is also the second plaintiff in the suit. An application has been made under Order 22 rule 14(1), (2), (3) and (4) of our Rules of the Supreme Court seeking approval of the court for settlement of both the plaintiffs' claim at $10,000 and for certain other orders mentioned in the summons-in-chambers (enclosure 52). The defendant's counsel has consented to all the orders sought except prayer No. 2 which reads as follows:—

"That the costs chargeable on a solicitor and client basis but not chargeable as between party and party be fixed at the sum of $1,000.00 and be paid to the plaintiff's solicitors out of the sum of $10,000.00;"

It is the contention of counsel for the defendant that as far as that prayer is concerned the matter is entirely between the plaintiffs and their solicitors. I agree with that contention and have consequently made no order on prayer No. 2.

Mr. Vohrah urged before me that our rules contained no provisions with regard to prayer No. 2 of the application and consequently under Order 72 rule 2 the practice and procedure in England was applicable. It is not necessary for me to say whether the practice and procedure which was in force in Malaya immediately before the Rules of the Supreme Court came into force should be preferred to the practice and procedure in force in the Courts of England at that time because there exists an express provision in Order 22 rule 14(11) covering the point. If an action comes up for

settlement under Order 22 rule 14 and the sole plaintiff in the action is an infant or if there are more than one plaintiff and at least one of such plaintiffs is an infant, the costs of the plaintiff or all the plaintiffs (including the infant plaintiff) both as between party and party and as between solicitor and client are required to be taxed, and unless such costs are certified they do not become payable to the solicitor for the plaintiff. Further the amount cannot exceed the costs so certified.

In the case of *Barker and Another v. S. Green & Sons. Ltd.*[1] Lord Chief Justice Goddard emphasised the importance of the strict adherence to the rule. Also see the observations of Lord Hewart in that case. The costs of all actions coming within the ambit of Order 22 rule 14 must be taxed and no question of any agreement between the parties arises.

Prayer No. 3 in the application seeks an order for taxation of costs between party and party. It is a proper prayer. I, however, fail to understand why the plaintiffs' solicitors do not wish to have their bill of costs as between solicitor and client taxed. I do not mean any disrespect. I, in fact, admire the candidness with which Mr. Vohrah told me that solicitors' firms doing work for infant plaintiffs were not doing so out of charity and had to be adequately paid for the services which they rendered. I could not agree more. They have a right to be adequately paid and such right is governed by the provisions of the Advocates and Solicitors Ordinance, 1947 and the Rules of the Supreme Court which read together determine what is the maximum amount a solicitor is entitled to on a solicitor and client basis when one of the plaintiffs is an infant.

There is no indication how much work the plaintiffs' solicitors have done. The only relevent paragraph in the supporting affidavit (enclosure 53) is paragraph 10 which reads:—

"Messrs. Murphy & Dunbar have advised me that the said sum of $10,000 is a reasonable sum bearing in mind the fact that my son be held to contribute to the accident to a certain degree and I wish to accept the same subject to the approval of this Honourable court."

I was told by Mr. Vohrah that there was in fact an agreement between the plaintiffs and the plaintiffs' solicitors. I do not dispute such an agreement although this agreement has to be in writing under section 60 of the Advocates and Solicitors Ordinance, 1947. Whether such an agreement, even if it be in writing, comes within section 67 of the Advocates and Solicitors Ordinance or not is in this case irrelevant as the provisions of Order 22 rule 14(11) are mandatory.

The second plaintiff is the father of the infant plaintiff as well as his next friend. Costs awarded to a next friend are really the costs of the infant. The solicitor may probably in a proper case obtain a charging order under the Advocates and Solicitors Ordinance, 1947, section 89, but there again the costs have to be taxed.

As I have held that the provisions of Order 22 rule 14(11) are mandatory, I am not prepared to make the order in terms of prayer No. 2 of the summons.

Prayer refused.

Solicitors: *Murphy & Dunbar; Subimal Guha Thakurta.*

RE UNITED IRON MINING CO. LTD.

[O.C.J. (Chang Min Tat J.) August 18, 1969]

[Ipoh — Companies Petition No. 2 of 1967]

Companies — Oppression of minorities — Petition — Amendment — Companies Act, 1965, ss. 181 & 221.

Practice and Procedure — Application under Companies Act, 1966 — R.S.C. 1957, O. 53B r. 3.

In this case an application was made for amendment of a petition under section 181 of the Companies Act, for remedies on the grounds of oppression of minorities. The application was opposed on the ground that the provision for amendment or withdrawal of a petition in section 221(2)(e) of the Companies Act, applied only to petitions for winding up.

Held: (1) the discretion under section 221(2)(e) of the Act to allow for amendments or for withdrawal with liberty to file a fresh petition cannot be extended to a petition under section 181, and the Companies (Winding-up) Rules, 1946, did not apply;

(2) by virtue of O. 53B r. 3, the Rules of the Supreme Court are applicable and the discretion of the court under the rules are available to the applicant.

COMPANIES PETITION

Lim Ewe Hock for the petitioners.

Dato' Eusoffe Abdoolcader for the respondent.

Cur. Adv. Vult.

Chang Min Tat J.: By summons-in-chambers in the above petition Mr. Lim Ewe Hock for the petitioners sought liberty to amend the petition as marked in red in the draft amended petition which was attached to the summons-in-chambers and for ancillary reliefs, alternatively for an order that the petitioners might be at liberty to withdraw the petition.

When the matter came before me on the 14th April, 1969, Dato' Eusoffe Abdoolcader for the respondent, the United Iron Mining Company, opposed the prayers in the summons-in-chambers on several grounds. In the first